

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: Q94512

Patrice RICHARD

Appln. No.: 10/577,132

Group Art Unit: 3761

Confirmation No.: 8183

Examiner: Susan Shan SU

Filed: August 28, 2006

For: PLACENTAL-BLOOD EXTRACTION DEVICE

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated August 18, 2008, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Applicant turns now to the rejections at issue: Claims 1-19 are the claims that have been examined in the instant application. Claims 1-7 and 11-19 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Deverre (U.S. 7,131,958) in view of Seddon et al. (U.S. 6,024,731). Claim 8 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Deverre (US 7,131,958) in view of Seddon et al. (US 6,024,731) as applied to claim 7 and further in view of Darling, Jr. (US 6,213,986). Claims 9 and 10 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Deverre (US 7,131,958) in view of Seddon et al. (US 6,024,731) as applied to claim 1 and further in view of Van Der Heiden et al. (US 5,879,318). Applicant respectfully disagrees.

The Examiner alleges that a combination of Deverre and Seddon would render claim 1 obvious. Specifically, the Examiner alleges that it would have been obvious to combine the placental-blood extraction device disclosed in Deverre with the vacuum bottle disclosed in Seddon, in order to speed up placental blood collection and sustaining the speed with the addition of a pump. Applicant disagrees. Given their distinct structures and application, there would have been no rationale for one skilled in the art to combine the placental-blood extraction device disclosed in Deverre with the vacuum bottle disclosed in Seddon.

Vacuum bottles, like Redon bottles, are reservoirs having a vacuum inside, which provides for automatic suction once the valve is opened. At the filing date of the instant patent application (and still true nowadays), these vacuum bottles are only used to drain wounds, by being connected to a drainage tube which ends inside the wound, as described in Seddon. Thus, vacuum bottles provide a continuous suction, and remain effective during hours, or days, after surgery, day and night, without a need for a medical professional to be present. Wound drainage systems are thus passive fluid collection devices, which are put in place by the surgeon at the end of the surgery.

On the other hand, active body fluid collection systems, in particular, blood collection systems, comprise a needle connected to a reservoir, the needle being used to pierce the patient's skin. Active systems are usually operated by nurses or similar, and not by surgeons. Although active systems for collecting body fluids are widely used in the medical field, none have ever been associated with vacuum bottles.

Being used with wound drainage, which usually shall remain effective during many hours or days, vacuum bottles have never been considered useful with active body fluid collection

systems (blood, urine, etc.), where the collection is made in a short period of time (seconds or minutes). Additionally, vacuum bottles in passive fluid collection devices are connected to drainage tubes, for which the opening inside the body has the same constant section as the opening which is connected to the vacuum bottle. On the other hand, active body fluid collection systems use needles to pierce the patient's skin, said needles providing a much smaller opening in the needle.

Therefore, someone skilled in the art, i.e. someone skilled in the use of systems for actively collecting fluid from a patient's body (e.g. nurses or similar patient-care and medical professionals), may consider using a similar active device, like blood collecting syringes, etc., where the collection of the fluid is made manually in a short period of time. However, vacuum bottles have never been used with such active devices. However, the skilled person would not consider the passive devices, like the wound drainage system of the Seddon reference, which are exclusively installed in the wound by the surgeon, and which provide a long-period and automatic action.

It is noted that when used with the placental blood extraction device recited in claim 1, the vacuum bottle provides a quicker blood collection process. However, this "accelerating" effect does not exist in the normal use of such vacuum bottles. Indeed, as previously explained, with wound drainage systems, the vacuum provides an automatic suction during a long period (several hours or days) without any external action by a nurse or similar. Thus, with wound drainage, the problem of having a quick collection does not exist. The skilled person (nurse or similar) would thus not consider the Seddon reference and would not combine it with the Deverre reference.

Finally, as a secondary consideration, and as already explained in the previous response, if it would have been so obvious for the skilled person to use a vacuum bottle with a placental blood collection system, then this combination should have been proposed a long time ago, as both main aspects of claim 1 have been known in the art. However, such a combination has never been proposed, which indicates that the combination of elements outlined in claim 1 is inventive.

In the Response to Arguments found on pages 5 and 6 of the instant Office Action, the Examiner argues that one of ordinary skill in the art would understand the concept of applying suction to increase the speed of fluid collection. Further, the Examiner argues that because of the desirability of collecting blood soon after the placenta is removed from the mother's body, one would look for a way to quicken the collection process. Thus, the Examiner alleges that the vacuum bottle in Seddon would be an obvious choice to be incorporated into the system of Deverre. However, as noted above, and as admitted by the Examiner, these two concepts are well-known in the art. The fact that the combination of placental blood extraction using a vacuum bottle has never been attempted clearly indicates the inventiveness of the combination.

Conclusion

For the reasons outlined above, claim 1 is patentable over the applied art. Claims 13 and 17 recite features similar to claim 1, and are patentable for reasons analogous thereto. Claims 2-12, 14-16 and 18-19 are patentable at least by virtue of their dependency from claim 1. Applicants respectfully request reconsideration of the Final Office Action and withdrawal of the rejections under 35 U.S.C. § 103(a) of claims 1-19.

Respectfully submitted,

/Dion R. Ferguson/

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

Dion R. Ferguson
Registration No. 59,561

WASHINGTON OFFICE
23373
CUSTOMER NUMBER

Date: February 18, 2009